IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

COMPANY APPLICATION NO.626 OF 2005
IN
COMPANY PETITION NO.620 OF 2005

Citibank N.A. ...Petitioner.
Vs.
Konega International Pvt. Ltd. ...Respondent.

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Mr. Cyrus Ardeshir i/b. Pardiwala & Co. for the Petitioner.
Mr. Amit Vyas for the Respondent.

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CORAM :DR.D.Y.CHANDRACHUD, J.
April 18, 2007.

P.C.:

The Company Application seeks an appointment of the Official Liquidator as Provisional Liquidator of the Respondent. The Respondent had furnished a guarantee in favour of the Applicant-Bank to secure the repayment of the dues of another Company. The Bank instituted proceedings before the Debts Recovery Tribunal. The application filed by the Bank was allowed by a judgment and order dated 28th June 2006 and accordingly a recovery certificate had been issued in the amount of approximately Rs. 4.52 crores, with future interest at 14.5% per annum.

The Company Petition for winding up was admitted on 4th May 2006. The Learned Single Judge rejected the submission that the Petition for winding up was not maintainable, since the Bank had approached the Debt Recovery Tribunal at that stage. The Court noted that the execution of the guarantee in favour of the Bank was not denied. An opportunity was granted to the Company to deposit a sum of Rs.60 lakhs to demonstrate its bona fides but the Company was unable to deposit the amount. The order of the Learned Single Judge was carried in appeal and on 6th June 2006, the appeal was permitted to be withdrawn on the ground that the Company sought to move the Learned Single Judge again for review of the order dated 4th May 2006 and/or clarification. A fresh application was filed before the Learned Single Judge which was dismissed on 14th September 2006. The Learned Single Judge held that all the objections raised on behalf of the Company were covered by the judgment of a Division Bench in the decision reported in 2001(3) ALL MR 838 that there was substance in the contention of the Counsel appearing on behalf of

the original Petitioner that the application was an abuse of a process of the Court. The Court noted the submission of the original Petitioner that though the Company Petition had come up for admission on 5 or 6 occasions and was adjourned in order to facilitate a settlement, no settlement was forthcoming.

As already noted earlier, the proceedings before the Debt Recovery Tribunal have culminated in a decree and order of 28th June 2006. An amount in excess of Rs. 4.52 crores is due and payable to the applicant exclusive of interest. At the hearing of the application for the appointment of the Official Liquidator, the Respondent was called upon to state as to whether it was in a position to give a Bank Guarantee before the Debt Recovery Tribunal in the amount of Rs. 4.52 crores which has passed a decree in the amount of Rs. 4.52 crores. Counsel appearing on behalf of the Company has stated on taking instructions that the Company is not in a position to furnish a Bank Guarantee. Though in para 6 of the reply it has been stated that for the year 2002-03 the turn over of the Company was Rs.43 crores, while for the

period between 1st April 2003 and 30th September 2004 the turn over stood at Rs.63 crores, the Company, as it now transpired, is neither ready nor able to secure the outstanding dues of the Petitioner which have culminated in a decree or order of the Debt Recovery Tribunal.

Counsel appearing on behalf of the Company has submitted that there was an offer of a one time settlement in the amount of Rs.2 crores having been made to the applicant. Counsel appearing on behalf of the Applicant disputed the factual correctness of this submission and stated that even during the hearing of the Company Petition, as the record would demonstrate, several adjournments were taken, but no bona fide offer was forthcoming. Having regard to the facts and circumstances of the case, as noted hereinabove, a case for the appointment of a Provisional Liquidator has been made out. However, taking into consideration the request made on the part of the Company that it should be allowed to negotiate with the Bank for a one time settlement, it would be appropriate to defer the taking of charge by the Official Liquidator by a period of six weeks from today. Within

this period, if a settlement is arrived at, the parties would be at liberty to move this Court in the present proceedings for variation of the order. Hence, the following order :

The Company Application is made absolute in terms of prayer clause (a). The actual taking over of charge by the Liquidator is deferred until 31st May 2007. Within this period, in the event that parties report that the dues of the Bank have been settled in terms of a one time settlement, it would be open to the parties to move this Court for modification of the order. The Company Application is accordingly disposed of.

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